

Service Date: July 19, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF a Tariff Filing)	UTILITY DIVISION
By Ronan Telephone Company Containing)	
the Rates, Terms and Conditions for)	DOCKET NO. D2000.1.14
Reciprocal Compensation Pursuant to)	
47 U.S.C. § 251(b)(5) and)	ORDER NO. 6225f
§ 69-3-834(2)(b), MCA)	

ORDER ON RECONSIDERATION

Introduction and Background

1. On June 1, 2000, the Montana Public Service Commission (Commission) issued Order No. 6225d granting a motion from Montana Wireless, Inc. (MWI) that Ronan Telephone Company (RTC) be required to "provide reciprocal compensation arrangements between MWI and [RTC] on a bill-and-keep basis while RTC's reciprocal compensation tariff is pending approval." Order No. 6225d, p.1. The Commission granted interim "bill-and-keep" "subject to a true-up, based on the final [RTC] reciprocal compensation rate, if transport and termination of traffic is not roughly in balance over the interim period." Id., p. 5.

2. On June 1, 2000, RTC filed a motion for reconsideration of Order No. 6225d and asked for oral argument on the motion. On June 23, 2000, MWI filed a response to the motion. On July 11, 2000, the Commission heard oral argument on the motion.

Discussion and Decision

3. Many of the arguments made by RTC on reconsideration were addressed in Order No. 6225d, and will not be addressed again here. RTC does, however, raise several new arguments.

4. First, RTC presented, along with its motion, an affidavit of its president, Jay Wilson Preston, in which Mr. Preston presents the results of a study which, according to Mr. Preston, demonstrate that transport and termination of traffic between RTC's wireline network

and wireless carriers is not "roughly in balance." The Commission does not comment on Mr. Preston's study, which he has also submitted as part of his prefiled rebuttal testimony in this case. A motion for reconsideration of a grant of interim "bill-and-keep" is not the place for the Commission to consider whether "bill-and-keep" should be the permanent reciprocal compensation arrangement in this case. The correct reciprocal compensation arrangement in this case will be determined after review of the record produced at the hearing, which record may include a testing of the conclusions Mr. Preston reaches in his study. In effect, RTC has jumped the gun by presenting Mr. Preston's study at this time. The correct reciprocal compensation arrangement for RTC – including rates, terms and conditions – remains at issue in this docket. Order No. 6225d creates an interim mechanism only; no party should interpret it as an indication of the final decision in this docket.

5. Second, RTC appears to argue that the Commission cannot presume a rough traffic balance unless it has facts to indicate a rough balance. This is not logical: if the Commission had facts to conclude there is a rough balance, it would not need to presume the rough balance. The facts needed to make a presumption cannot be the same facts that would make a presumption unnecessary. RTC's interpretation of the law on presumptions would make 47 C.F.R. § 51.713(c) meaningless. The Commission finds RTC's interpretation without merit.

6. Third, RTC contends that the "filed rate statute" and the prohibition on retroactive ratemaking make it impossible for the Commission to implement a true-up. This is not correct. Order No. 6225d does not require RTC to file a rate in any traditional sense. Further, the prohibition against retroactive ratemaking applies to the retroactive adjustment of permanent rates, not interim rates. Retroactive adjustment is a basic feature of interim rates. The Commission has the authority to order a true-up. MWI is on public record accepting its legal obligation to make a true-up payment to RTC pursuant to the reciprocal compensation rate established in this docket, if the facts support such a true-up. (Given different facts, RTC may have to make a true-up payment.) RTC's fears that a true-up mechanism will prove unenforceable are not supported in law and provide no basis for reconsidering Order No. 6225d.

Conclusions of Law

1. The Commission adopts by reference its conclusions of law at Order No. 6225d

Order

1. RTC's motion for reconsideration of Order No. 6225d is denied. RTC is directed, as soon as reasonably possible, but not later than sixty (60) days from the service date of this Order, to transport and terminate local telecommunications traffic, as contemplated at 47 C.F.R. § 51.701(e) and 47 U.S.C. § 251(b)(5), under an interim "bill-and-keep" arrangement, subject to true-up, as described in Order No. 6225d and this Order. Within ten (10) days of the service date of this Order RTC is directed to file a progress report with the Commission indicating the steps that have been taken to comply with Order No. 6225d and this Order.

DONE AND DATED this 11th day of July, 2000, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY McCaffree, Vice-Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

CONCURRING OPINION OF COMMISSIONER ROWE

A reasonable response to Ronan's motion for reconsideration would have been an interim agreement with the following elements: 1) A true-up, as contained in the Commission's initial order; 2) A default traffic ratio consistent with other arrangements between wireless carriers and rural incumbents approved by the Commission; 3) A per-minute rate within the range of other arrangements between wireless carriers and rural incumbents approved by the Commission.

The undersigned offered this approach to the parties for their consideration. However, absent an agreement between the parties such a compromise is not before the Commission on this motion. Therefore, I support denying the request for reconsideration.

RESPECTFULLY SUBMITTED this 11th day of July, 2000.

BOB ROWE, Commissioner